

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

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Court of Appeals, District of Columbia

OCTOBER TERM, 1906.

No. 1693.

438

FREDERICK SHORTSLEEVES, APPELLANT,

vs.

THE CAPITAL TRACTION COMPANY.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

FILED JUNE 28, 1906.

COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

OCTOBER TERM, 1906.

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FREDERICK SHORTSLEEVES, APPELLANT,

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In the Court of Appeals of the District of Columbia.

No. 1693.

FREDERICK SHORTSLEEVES, Appellant,
vs.
THE CAPITAL TRACTION COMPANY.

a Supreme Court of the District of Columbia.

At Law. No. 47833.

FREDERICK SHORTSLEEVES, Plaintiff,
vs.
CAPITAL TRACTION COMPANY, a Corporation, Defendant.

UNITED STATES OF AMERICA, *District of Columbia, ss:*

Be it remembered, That in the Supreme Court of the District of Columbia, at the city of Washington in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had, in the above-entitled cause, to-wit:

1

Declaration.

Filed July 6, 1905.

In the Supreme Court of the District of Columbia.

At Law. No. 47833.

FREDERICK SHORTSLEEVES, Plaintiff,
vs.
CAPITAL TRACTION COMPANY, a Corporation, Defendant.

The plaintiff Frederick Shortsleeves, sues the defendant, the Capital Traction Company, a corporation doing business in the District of Columbia, for that heretofore, to wit: on the 17th. day of June A. D. 1905, between the hours of ten and eleven P. M. the defendant was the owner and proprietor of a certain electric railway for the carriage of passengers for hire in the city of Washington, District of Columbia, and for that heretofore, to wit, the day and year aforesaid, the plaintiff in consideration of a certain fare to said defendant in hand paid by the plaintiff, became and was a passenger upon a certain car

known as a Georgetown car of said railway, without molestation or disturbance, and that one of the agents and employees of the said defendant, to wit, the conductor of the said car, upon request handed and gave as of right, to the plaintiff, in this case, a transfer in all respects valid and good for a continuation of the journey and ride selected by the said plaintiff, to be made, to wit, upon one of the cars commonly known as an F & G St. car on the branch line known by

2 that name, but the plaintiff avers that upon presentation of the said valid and good transfer, properly time marked and otherwise good for a continuation of his journey over the line of the said defendant to his place of destination, and which transfer, he the said plaintiff upon request for payment of passage did present to the agent and employee of the defendant operating as a conductor upon this, the next consecutive car, upon said line to make the west course to Georgetown D. C. following next after the car upon which the said transfer was given. That the said defendant in violation of its duty in this regard and notwithstanding that the plaintiff conducted himself in a lawful, orderly and becoming manner and was entitled to the said ride upon the transfer presented on the said F & G St. car, to his place of destination upon the said line, yet said defendant through its agents and employees, unlawfully assaulted and with dire threats to use a weapon, to wit, the instrument commonly known as a controller handle such as is used upon defendant's cars; with force and violence ejected and expelled the plaintiff from the said car at a point on its line, just beyond the usual place of transfer of said car, to wit: on G St. N. W. near 17th St. N. W., and thereby through the carelessness, negligence and wilful and improper conduct of the said defendant, as aforesaid, and through the wrongful acts of its said agents and employees, as aforesaid, the plaintiff was injured and was caused to suffer great humiliation and indignity in the presence of a large number of persons and suffered great pain of body and mind, together with great strain upon the natural weakness of plaintiff's heart, to his damage in the sum of Two Thousand

3 (\$2,000.) Dollars.

Wherefore he brings suit and claims the sum of Two Thousand (\$2,000.) Dollars, damages besides costs.

J. JEROME LIGHTFOOT,
NICHOL & MATHEWS,
Attorneys for Plaintiff.

The defendant is to plead hereto on or before the 20th. day, exclusive of Sundays and Legal Holidays, occurring after the day and service hereof; otherwise judgment.

J. JEROME LIGHTFOOT,
NICHOL & MATHEWS,
Attorneys for Plaintiff.

Plea.

Filed July 13, 1905.

In the Supreme Court of the District of Columbia.

At Law. No. 47833.

FREDERICK SHORTSLEEVES, Plaintiff,

vs.

THE CAPITAL TRACTION COMPANY, a Body Corporate, Defendant.

1. The Capital Traction Company, the defendant in the above entitled cause, for a plea to the declaration of the plaintiff Frederick Shortsleeves, filed therein, says it is not guilty in the manner and form therein alleged.

2. And for a further plea in this behalf as to the assaulting
4 and threats in the said declaration mentioned, the said defendant says that the said plaintiff ought not to have or maintain his aforesaid action against it because it says that the plaintiff at the said time when etc., to wit, on the day and year aforesaid, at the District of Columbia, boarded at 15th Street and Pennsylvania Avenue, Northwest, in the District aforesaid, the certain train of cars operated by the defendant going West, which at the junction of 17th Street and Pennsylvania Avenue, Northwest, leaves Pennsylvania Avenue and proceeds thence West on G street; that the defendant says that by one of its servants it then and there demanded of the plaintiff his said fare and the said plaintiff then and there refused to pay the same and tendered to the defendant's said servant a transfer, which upon its face and in accordance with the rules and regulations of the defendant was good for the transfer of one passenger from the Pennsylvania Line at the point of change to the Line punched, and the defendant avers that the point of change was 17th Street at Pennsylvania Avenue, Northwest, and that the Line punched was as follows, to wit, to 17th Street at Pennsylvania Avenue. Wherefore the defendant alleges that the plaintiff was not entitled by virtue of the said transfer to be carried by the defendant as a passenger from 15th Street and Pennsylvania Avenue, Northwest, to his place of destination, and the defendant by its said servant then and there refused to receive the said transfer and demanded of the plaintiff his said fare, the payment whereof was then and there
5 refused by the said plaintiff, whereupon the defendant by its servant aforesaid gently laid hands upon the plaintiff as he might lawfully do, using no more force than was necessary then and there to remove him from the said defendant's train of cars, and in so doing did necessarily a little touch the said plaintiff, doing no unnecessary damage to him on the occasion aforesaid, which was the assaulting and threats in the introductory part of this plea mentioned and whereof the plaintiff has complained; and this, the defendant is ready to verify. Wherefore he prays judgment if

the said plaintiff ought to have or maintain his aforesaid action against it.

R. ROSS PERRY & SON,
G. THOS. DUNLOP,
Attorneys for Defendant.

Replication.

Filed July 24, 1905.

In the Supreme Court of the District of Columbia.

At Law. No. 47833.

FREDERICK SHORTSLEEVES, Plaintiff,
vs.

THE CAPITAL TRACTION COMPANY, a Body Corporate, Defendant.

The plaintiff for a replication to the plea of the defendant in the above entitled cause says that the defendant of his own wrong and without the causes by him in said plea alleged, committed the wrongs and grievances against the plaintiff as in the said declaration
6 mentioned in manner and form as the plaintiff has in said declaration in that behalf complained against him.

J. JEROME LIGHTFOOT,
NICHOL & MATHEWS,
Attorneys for Plaintiff.

Demurrer of Defendant to Replication.

Filed July 27, 1905.

In the Supreme Court of the District of Columbia.

At Law. No. 47833.

FREDERICK SHORTSLEEVES, Plaintiff,
vs.

THE CAPITAL TRACTION COMPANY, a Body Corporate, Defendant.

Now comes the defendant in the above entitled cause, by R. Ross Perry & Son and G. Thomas Dunlop, its Attorneys, and says that the replication of the plaintiff to the pleas of the defendant is bad in substance.

R. ROSS PERRY & SON,
G. THOS. DUNLOP,
Attorneys for Defendant.

NOTE: Among the points of law to be argued in support of the above demurrer is that the replication does not purport to be to each

of the several pleas of the defendant, and that the said replication is not a proper replication to the first plea of the said defendant, the said plea being the general issue.

R. ROSS PERRY & SON,
G. THOS. DUNLOP,
Attorneys for Defendant.

7 J. J. Lightfoot, Esq., Attorney for Plaintiff:

Please take notice that the above demurrer will be called for hearing before the Justice holding the Circuit Court on Wednesday, the second day of August, 1905, at 10 o'clock a. m., or as soon thereafter as counsel can be heard.

R. ROSS PERRY & SON,
G. THOS. DUNLOP,
Attorneys for Defendant.

Supreme Court of the District of Columbia.

TUESDAY, *August 2nd*, 1905.

Session resumed, Hon. Job Barnard, Justice, presiding.

No. 47833. At Law.

FREDERICK SHORTSLEEVES, Pl'ff,
vs.
CAPITAL TRACTION Co., Defendant.

Upon consideration of the demurrer to the replication herein, it is ordered, that said demurrer be, and is hereby sustained, with leave to plead over within ten days.

8 *Joinder of Issue, &c.*

Filed August 2, 1905.

In the Supreme Court of the District of Columbia.

At Law. No. 47833.

FREDERICK SHORTSLEEVES, Plaintiff,
vs.
THE CAPITAL TRACTION COMPANY, a Body Corporate, Defendant.

The plaintiff joins issue to the first plea of the defendant.

J. JEROME LIGHTFOOT,
NICHOL & MATHEWS,
Attorneys for Plaintiff.

In the Supreme Court of the District of Columbia.

At Law. No. 47833.

FREDERICK SHORTSLEEVES, Plaintiff,

vs.

THE CAPITAL TRACTION COMPANY, a Body Corporate, Defendant.

The plaintiff for a replication to the second plea of the defendant in the above entitled cause says that the defendant of its own wrong and without causes by it in said plea alleged, committed the
9 wrongs and grievances against the plaintiff as in the said declaration mentioned in manner and form as the plaintiff has in said declaration in that behalf complained against it.

J. JEROME LIGHTFOOT,
NICHOL & MATHEWS,
Attorneys for Plaintiff.

Joinder of Issue.

Filed August 2, 1905.

In the Supreme Court of the District of Columbia.

At Law. No. 47833.

FREDERICK SHORTSLEEVES, Plaintiff,

vs.

THE CAPITAL TRACTION COMPANY, a Body Corporate, Defendant.

The Capital Traction Company, the defendant in the above entitled cause, joins issue with Frederick Shortsleeves, the plaintiff therein, upon the replication of the said plaintiff filed to the second plea of the defendant to the declaration of the plaintiff.

R. ROSS PERRY & SON,
G. THOS. DUNLOP,
Attorneys for Defendant.

10

Memorandum.

February 15, 1906.—Verdict for defendant.

Supreme Court of the District of Columbia.

FRIDAY, *March 9th*, 1906.

Session resumed pursuant to adjournment, Hon. Thos. H. Anderson, Justice presiding.

* * * * *

No. 47833. At Law.

FREDERICK SHORTSLEEVES, Plaintiff,

vs.

CAPITAL TRACTION COMPANY, a Corporation, Defendant.

It appearing that plaintiff herein has by his attorneys of record herein withdrawn the motion for a new trial filed herein, judgment on verdict is ordered. Thereupon, it is considered and adjudged, that the plaintiff herein take nothing by this action, that the defendant go hereof without day, be for nothing held, and recover of plaintiff its costs of defense to be taxed by the Clerk, and have execution thereof.

11 *Order for Appeal and Citation.*

Filed March 15, 1906.

In the Supreme Court of the District of Columbia, the Fifteenth Day of March, 1906.

At Law. No. 47833.

FREDERICK SHORTSLEEVES, Plaintiff,

vs.

THE CAPITAL TRACTION COMPANY, a Body Corporate, Defendant.

The Clerk of said Court will note an appeal to the Court of Appeals and issue citation to appellee.

J. JEROME LIGHTFOOT AND
S. M. BROSIUS,*Attorneys for Plaintiff.*

12 Filed Mar. 15, 1906. J. R. Young, Clerk.

In the Supreme Court of the District of Columbia.

At Law. No. 47833.

FREDERICK SHORTSLEEVES

vs.

THE CAPITAL TRACTION COMPANY.

The President of the United States to The Capital Traction Company,
Greeting:

You are hereby cited and admonished to be and appear at a Court of Appeals of the District of Columbia, upon the docketing the cause therein, under and as directed by the Rules of said Court, pursuant to an Appeal filed in the Supreme Court of the District of Columbia, on the 15th day of March, 1906, wherein Frederick Shortsleeves is Ap-

pellant, and you are Appellee, to show cause, if any there be, why the Judgment rendered against the said Appellant, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Harry M. Clabaugh, Chief Justice of the Supreme Court of the District of Columbia, this 15th day of March in the year of our Lord one thousand nine hundred and six.

[Seal Supreme Court of the District of Columbia.]

J. R. YOUNG, *Clerk*,
By ALF. G. BUHRMAN, *Ass't Cl'k*.

Service of the above Citation accepted this 15th day of March, 1906.

R. ROSS PERRY & SON,
Attorneys for Appellee.

[Endorsed:] No. 47,833 Law. Equity. Citation. Filed Mar. 15, 1906. J. R. Young, Clerk.

13

Memoranda.

March 26, 1906.—Appeal Bond filed.

March 26, 1906.—January Term of the Court prolonged thirty-eight (38) days to settle Bill of Exceptions.

May 4, 1906.—Bill of Exceptions submitted.

May 15, 1906.—Time in which to file Transcript of Record in Court of Appeals extended to July 1st, 1906.

Supreme Court of the District of Columbia.

WEDNESDAY, *May 23rd*, 1906.

Session resumed pursuant to adjournment, Hon. Thos. H. Anderson, Justice, presiding.

* * * * *

No. 47833. At Law.

FREDERICK SHORTSLEEVES, Plaintiff,

vs.

THE CAPITAL TRACTION Co., Def't.

14

The Bill of Exceptions heretofore submitted to the Court is now signed and made of record as of the time of the trial hereof.

Bill of Exceptions.

Filed May 23d, 1906.

In the Supreme Court of the District of Columbia.

At Law. No. 47833.

FREDERICK SHORTSLEEVES

vs.

THE CAPITAL TRACTION COMPANY.

Be it remembered that at the trial of this cause before the Honorable, Justice Anderson, of the Supreme Court in and for the District of Columbia, and a jury regularly empaneled and sworn to try the issues pending between the plaintiff and the defendant, the plaintiff to maintain and prove the issues upon his part joined, having first been duly sworn, testified in substance as follows: That on the evening of June 17, A. D., 1905, between the hours of ten and eleven o'clock, P. M., he was a passenger upon one of the cars of the defendant Company which he had boarded at the Navy Yard and which ran along Pennsylvania Avenue to west Washington or Georgetown, and that about 12th street, northwest, on Pennsylvania Avenue, he received a green transfer ticket for a ride over what is known as the "F & G" Street branch of the railroad system; that the cars on this line going west travel along Pennsylvania Avenue to Seventeenth Street; there they leave Pennsylvania Avenue and go down Seventeenth Street to G street, and thence west on G street; that he alighted from the Pennsylvania Avenue car upon

15 which he had been riding at Fifteenth Street and Pennsylvania Avenue and at that point boarded the next following car which was an F & G street car; that no demand or request was made for the plaintiff's fare until "he got to 17th. street" on Pennsylvania Avenue, northwest, this being also a transfer point and the divergent point of the F & G street branch line for passengers going out G street: that the conductor of the car did not come to him for a ticket or fare until the car got to 17th Street; that he then handed the conductor of the car the transfer ticket he had received from the conductor of the other car; that the conductor took the transfer ticket from the plaintiff but refused to accept it as fare and said it was not good and that the plaintiff would have to pay a fare or be put off; that the transfer ticket he handed the conductor may have fallen between them; that there was some argument between the two about the matter and the plaintiff heard the conductor say something about a green transfer. The plaintiff further testified "The car started, went across the crossing, down Seventeenth Street, in front of the Mills Building it stopped, and he didn't come near me (plaintiff) or anything; the car started on again and went down to G street, turned up G street, and as it went around the corner it stopped, but just barely stopped, and the car got moving again under pretty fair

headway; so then I saw him (the conductor) pull the bell and the car stopped; it was then about 125 feet from Seventeenth street up G street."

16 The motorman came to the conductor's assistance and the plaintiff was ejected from the car by the conductor who put his hand upon the plaintiff's back. While the plaintiff was on the car he told the conductor that he had money and tickets.

And thereupon counsel for the plaintiff asked the plaintiff the following question:

"Q. Have you often made that change, that transfer from the Avenue car line to the F and G street route? A. I never changed anywhere else but at 15th Street."

To which question and answer counsel for the defendant then and there objected, on the ground that it was incompetent to show that the plaintiff had on other occasions changed or transferred from the Avenue Line to the F and G street Line at any point other than that authorized by the transfer which the plaintiff had in his possession on such occasions; to which objection the plaintiff replied proposing to prove that such change was more or less of a custom, and was oftentimes done. Whereupon the court ruled that the said testimony was not competent, on the ground that a conductor of the defendant company had no right to permit a person to transfer on the defendant's cars in violation of the contract right evidenced by the transfer, and excluded the same; to which ruling of the Court in excluding the said testimony the plaintiff, by his counsel, then and there excepted, and the Court then and there entered the said exception upon its minutes.

It was thereupon agreed upon by counsel for both the plaintiff and the defendant that at the time of the happening of the matters hereinbefore recited with respect to the ejection of the plaintiff
17 from the defendant's car by reason of his refusal to pay his fare, according to the regulations of the defendant company a green transfer was given only to persons desiring to transfer from a Pennsylvania Avenue car, and that it is stated on the face thereof that it is "Good for a transfer of one passenger from the Penn. Avenue line at point of change to the line punched," and that the line punched on the transfer ticket in question read "To 17th Street at Pa. Avenue." A form of a transfer ticket was submitted by defendant which was agreed to by plaintiff and defendant counsel as being similar to the one issued by the defendant company and held by the Plaintiff and offered and tendered by him for his transportation, which contains words and figures as follows:

June 17, 1905. 8404—Stedman System of Transfers—Good for transfer of one passenger from PENN. AVENUE LINE at point of change, to the line punched, and until time cancelled in margin. Subject to the rules of the Company. Passengers are required to see that time punched is correct. This is not a stop-over check and is not transferrable.

CAPITAL TRACTION CO.

A. M.	P. M.
<u>To 14th. Street At N. Y. Avenue.</u>	
<u>To 7th. Street At Pa. Avenue.</u>	
<u>To 17th. Street At Pa. Avenue.</u> (Punched on this line)	
<u>To 26th. Street At Pa. Avenue.</u>	
<u>To B. & O. Depot At Peace Mon.</u>	
<u>E. At 8th. & Pa. Ave. S. E</u>	

The above words and figures upon the transfer ticket were surrounded by figures denoting the hours and each fraction of an hour between one and twelve o'clock, inclusive, the time, A. M. or P. M. being noted, as indicated, and upon green and black background, respectively; the fractions of hours being divided into periods of ten minutes each.

And thereupon the plaintiff rested.

And next thereupon, to prove the issues on its part joined, the defendant gave in evidence the original declaration, and the same was read to the jury, as follows:

(It is agreed by counsel that the declaration already printed in the record shall be considered as printed here and as constituting a part of this bill of exceptions.)

And next the defendant gave in evidence a plat of the part of the route of the defendant company covered by the plaintiff's evidence, and the same was shown to the jury, and is as follows:

(It is agreed by counsel that Plat Six of the Atlas of Washington, District of Columbia, published by G. M. Hopkins, first edition, shall be exhibited to the Court of Appeals upon the argument as constituting a part of this bill of exceptions, as fully as if lithographed and inserted herein. This is done for the purpose of saving expense to the appellant.)

And next thereupon, to prove the issues on its part joined, the defendant gave in evidence the testimony of DAVID S. CARLL, as follows:

I am engineer and superintendent of the defendant, the Capital Traction Company. During the month of June, 1905, the system of transfers used by the said Company was as follows: A passenger coming from the Navy Yard or up Pennsylvania Avenue on one of the cars going through to Georgetown desiring to go up F and G street was given a transfer to transfer him at Seventeenth and Pennsylvania Avenue to the car going up G street. He was given a green transfer similar to the one that I have in my hand. (This transfer was read in evidence to the jury.) The transfer points as they are printed on the transfer are as follows: A passenger coming from the Navy Yard who wanted to go down to the bridge at the eastern end of Pennsylvania Avenue would be given a transfer punched for 8th street and Pennsylvania Avenue S. E. at

that space in the transfer. The next was to the B. & O. Depot arriving at the Peace Monument; if he wanted to go to the B. & O. Depot he would be given a transfer punched in that space. The next to Fourteenth Street at New York Avenue, if he wanted to go out Fourteenth Street. I omitted here the transfer to Seventh Street and Pennsylvania Avenue. If a person wanted to transfer there, he would be given a transfer to Seventh Street, good going in either direction. Then to Seventeenth Street and Pennsylvania Avenue, arriving at Seventeenth and Pennsylvania Avenue, he would be given a transfer punched from that point, which would be good to go down Seventeenth Street and out G towards Georgetown. The object of having transfer points is that a person boarding an initial car can be transferred to reach any point on the system that he may desire to reach. At the time in question a person having a green transfer and who was on a car going to Georgetown over the Pennsylvania Avenue Line would have to transfer, in order to get to the F and G Street Lines, at Seventeenth Street and Pennsylvania Avenue. The cars that are known as those of the Pennsylvania Avenue Line start at the Navy Yard, come up Eighth Street to Pennsylvania Avenue, then follow Pennsylvania Avenue out to Georgetown; they
 20 go along Pennsylvania Avenue to M street, and then on M street over to M and Thirty-sixth Streets. The cars known as the F and G Street Line, starting from the Eastern Branch, the eastern end of Pennsylvania Avenue at the Eastern Branch, come up Pennsylvania Avenue to Seventeenth and Pennsylvania Avenue, northwest, then turn down Seventeenth Street for a short distance to G, out G to Twenty-fifth, up Twenty-fifth to Pennsylvania Avenue, and then along M Street to the station.

And next thereupon the witness designated upon the said plat the transfer-point on Pennsylvania Avenue near Seventeenth Street at which transfers such as the plaintiff had on the occasion in question were good for a transfer to the F and G street Line; and further, the witness marked on the said plat the transfer-point on Fifteenth Street opposite Thompson's Drug-Store, known as the Fifteenth Street transfer, where persons transferred from the Avenue to the Fourteenth Street Line, and *vice versa*.

Whereupon, upon cross-examination, the witness was asked by counsel for the plaintiff where the cars stop at Pennsylvania Avenue and Seventeenth Street when the car is stopping to take on passengers going west, before turning down G Street; to which the witness answered that they stop before they strike the switch on the straight track on Pennsylvania Avenue, and that there they take on passengers who are expecting to go down Seventeenth Street on transfers; that the point where the cars stop for that purpose is about
 twenty-five feet before the car strikes the switch in question.

21 Upon redirect examination the witness testified that the switch he referred to was where the F and G street Line separated from the Avenue Line, on Pennsylvania Avenue just before reaching Seventeenth Street.

Further, the said witness Carll testified that the rate of fare over the lines of the Capital Traction Company, and over every portion of

them, was five cents cash, and six tickets for a quarter, and that a passenger had to pay the regular fare, five cents or a ticket, whether he rode over the whole length of the line or over any fractional part thereof; that there was only one fare from the Navy Yard to Georgetown.

And next thereupon, to maintain the issues on its part joined, the defendant gave in evidence the testimony of HUGH H. LYONS, as follows:

My name is Hugh Henry Lyons, and on the occasion in question I was a conductor upon the car of the defendant, the Capital Traction Company, on which the plaintiff was riding. On that occasion the plaintiff boarded the car, which was an F and G street car, at Fifteenth and New York Avenue, and as it turned the curve at Fifteenth and New York Avenue I went to him for his fare, and he handed me a green transfer. I told him the transfer was not any good at that junction. Then he refused to pay his fare. I told him he would have to pay a fare or he would have to get off. He said he would not pay his fare, and he would not get off, either, and I could not put him off. I tried to get his fare from him, and when I got down on Seventeenth Street I pulled a hard bell, and went to the

22 motorman and told him that I had a man back there that was too big for me to put off, and he came back with me to put him off. After the car had passed around from Seventeenth Street into G street right by the Mills Building, I went back to him with the motorman, and he said he did not want any trouble, and he wanted to see whether he was right about it, and he got off. I did not get the transfer. The plaintiff had it in his hand when he left the car. I told him that the transfer was not good; that he was at the wrong junction with it; that it was the wrong transfer junction.

Whereupon, on cross-examination, the witness testified that the transfer which the plaintiff showed him on the occasion in question was an Avenue transfer; that it was not good on his car at the Fifteenth Street junction; that if the transfer had been made at the Seventeenth Street junction it would have been good, if punched right; that he didn't look to see where the transfer was punched as he saw it was a Pennsylvania Avenue transfer; that when the plaintiff presented the transfer after leaving the Fifteenth Street junction the witness (the conductor) asked him for his fare, and he was fumbling in his pockets; that the witness kept talking to him, when he finally said he was not going to pay any fare, and was not going to get off, and that the witness would have to put him off; that the witness did not let him alone, but was standing right by him and trying to get his fare from him all the way from Fifteenth Street up to the Seventeenth Street junction; that the car had turned around Seventeenth Street into G Street when the witness stopped the car and put the plaintiff off; that when the witness first told the plaintiff that the

23 transfer was not good, and he would either have to pay his fare or get off the car, the car was right opposite Riggs Bank, and that it takes two minutes to run from the Riggs Bank to the Seventeenth Street transfer junction.

Whereupon on re-cross examination counsel for the plaintiff asked the witness the following questions which were answered by the witness as follows:

Q. The reason you put this plaintiff in this case off the car on the G street line, after you had gone down 17th. Street, and were then running along G street, going west, was because he had not paid his fare from the 15th. Street point where he boarded that car up to 17th. Street, the transfer point? That was the reason you put him off, was it not? A. Yes; that is the reason why I told him to get off, because he had not paid his fare.

Q. From 15th. to 17th. streets? A. Yes.

Q. And yet he had a transfer that was good from the 17th. street junction on out G street over the line that you were then running on with the car; was it not—that was good? A. It would have been good if it had been punched right.

Q. Well, you accepted those transfers from other passengers just as his was, did you not? A. Yes.

Whereupon the plaintiff prayed the Court to instruct the jury as follows:

24

First Prayer.

If the jury find from the evidence that the plaintiff held a transfer ticket given him by the defendant, which the defendant would ordinarily have accepted in payment for transportation by its cars when presented by a passenger who had gotten upon an "F & G Street" car at the point of divergence of the defendant's line from Pennsylvania Avenue, at Seventeenth Street, Northwest, then plaintiff, who had gotten upon such a car prior to reaching such point of divergence, and offered such transfer ticket in payment for his fare after the car had started from the point of divergence at Pennsylvania Avenue and was proceeding along its line that extends over Seventeenth Street and G Street, Northwest, and was then ejected by the defendant for refusing to pay an additional fare, then the jury will find for the plaintiff.

Second Prayer.

If the jury find from the evidence that the plaintiff was given a transfer ticket by the defendant to carry the plaintiff in the defendant's cars going west over the "F & G Street" line, and the plaintiff boarded as a passenger one of the defendant's cars, marked "F & G Street" line, at 15th Street and Pennsylvania Avenue, Northwest, and the defendant refused to accept such transfer ticket, offered by the plaintiff in payment for his transportation after the car had diverged from Pennsylvania Avenue and was proceeding along the line on Seventeenth Street and G Street, Northwest, and
 25 ejected the plaintiff from its car for refusing to pay an additional fare, then the jury will find for the plaintiff.

Third Prayer.

If the jury find from the evidence that the plaintiff held a transfer ticket given him by the defendant to carry the plaintiff over the de-

defendant's line, from the point of divergence at Seventeenth Street and Pennsylvania Avenue, Northwest, going along Seventeenth Street and G Street, Northwest, and the plaintiff entered one of defendant's cars as a passenger, and offered the defendant such transfer ticket in payment for his fare in the defendant's car after the car started from the point of divergence of the line at Seventeenth Street at Pennsylvania Avenue, Northwest, and was proceeding along the route of Seventeenth Street and G Street, Northwest, and the defendant refused to accept such transfer ticket in payment for the plaintiff's fare, and ejected the plaintiff from its car for refusal to pay an additional fare, then the jury will find for the plaintiff.

Fourth Prayer.

If the plaintiff was rightfully on the car as a passenger he had the right to refuse to be ejected from it, and to make a sufficient resistance to being put off to denote that he was being put off against his will; and the fact that under such circumstances he was put off the car, was of itself a good cause of action against the defendant, and the defendant is liable to plaintiff in damages for mental suffering, wounded pride, indignity, humiliation and insult, 26 irrespective of any physical injury he may have received at the time, or which was caused thereby, and the jury shall award such damages as they deem compensatory.

Fifth Prayer.

If the jury find from the evidence that the plaintiff held a transfer ticket given him by the defendant to transport the plaintiff in the defendant's cars going over the defendant's line from the point of divergence of its line at Seventeenth Street at Pennsylvania Avenue, Northwest, along F street and G street, Northwest, and while the plaintiff was a passenger in one of the defendant's cars that was proceeding along Seventeenth Street and G Street, Northwest, he offered the defendant such transfer ticket in payment for his fare and the defendant refused to accept such transfer ticket in payment for the plaintiff's fare and ejected the plaintiff from its car for refusal to pay an additional fare in the presence of other passengers, then on account of the concurrent humiliation, insult, mental suffering, wounded pride and indignity to him by said defendant, the jury shall award such damages as deemed by them compensatory for such humiliation, etc., for the ejection of the plaintiff for refusal to pay an additional fare, irrespective of any physical injury he may have received at the time or which was caused thereby.

But the Court refused to grant any of the said prayers except the plaintiff's fourth prayer, which the Court did grant and gave to the jury, to which refusal of the Court to grant the plaintiff's first, 27 second, third and fifth prayers the plaintiff, by his counsel, then and there excepted, and the Court entered the said exception upon its minutes.

And next the Court instructed the jury as follows:

GENTLEMEN OF THE JURY: I shall only detain you a moment in the instructions that I am about to give you. There are a few general observations that I will make, as this is your first case.

In the first place, the burden of proof here is upon the plaintiff to satisfy you by the weight of evidence that he has suffered the wrongs complained of at the hands of the defendant, and that the defendant is responsible therefor, or that it has occurred through the fault of the defendant. Now, by "the burden of proof" is meant simply the weight of evidence. In a civil case a fact is to be established by the preponderance of evidence, what we call the general weight of evidence. In a criminal case the fact in issue must be established beyond a reasonable doubt. That is the distinction between civil and criminal cases.

In determining the weight of the evidence you are not to be controlled simply by the number of witnesses that may be called upon the one side or upon the other. You will take the entire testimony, and deal with it as a whole, and render your verdict upon that side of the case that is supported by the weight of the testimony as a whole.

One witness has been called here on behalf of the plaintiff—the plaintiff himself. On the other hand, five witnesses, possibly, have been called. Now, the weight of testimony does not depend upon the number or size of the witnesses. One witness may outweigh
28 half a dozen others in the judgment of a jury, or may not, in the judgment of the jury. But it is a matter for you to consider, when there is a conflict of evidence, and one witness testifies one way and all of the other witnesses, five or six, testify the other way, with equal opportunity to know the fact they are talking of—then you have a right to consider the disproportion of the witnesses contending one way in behalf of a given fact and those contending the other way. It would then be your duty to determine whether it is reasonable to suppose that one man, having no better opportunity to know the facts than the other, is more likely to be right than the other, more likely to remember what was said and what was done than a half a dozen others equally well situated to know what was said and what was done.

So much for the weight of the testimony. Now, coming to this case:

The plaintiff here complains that on the 17th of June last he was wrongfully ejected from the cars of the defendant Company; that he had been on the car, this same car, or at least he had come to 15th Street over the Company's lines, and there he got a transfer good from the point of transfer up at 17th and Pennsylvania Avenue for passage west via G Street; that instead of using that ticket for his passage from the point of transfer, he boarded the Company's car at the point where he was, 15th and G. Now, his position is that he was entitled to travel on that transfer from 15th Street up to 17th street, and that having traveled that far without being ejected from the car, and having received a transfer that was good from that point on, having tendered it as his fare, he had a right to travel upon
it.

29 You have already heard what the Court has said touching the law of this matter. If you believe from the evidence that

the conductor demanded his fare before he reached the point of transfer, and he offered in payment of that fare the transfer in question, and the conductor refused to accept it, giving him as a reason that it was not good at that point, not good until they had reached the point of transfer, and that unless he paid his fare he would have to get off, the conductor in doing so was in the light of his duty, and it was the duty of the plaintiff here to either pay his fare or leave the car, and it does not make any difference whether he ejected him from the car before he reached 17th street or after. The conductor would have a perfect right to refuse to allow him to ride upon the car in the absence of the payment of fare.

So that if you should find from the weight of evidence that this demand for fare was made before he reached the point of transfer at 17th and Pennsylvania Avenue, and he refused to pay his fare, and he was ejected at any time thereafter for that reason, then he is not entitled to recover.

If, on the other hand, gentlemen, you should find from the weight of the evidence that no demand for a fare was made until after the car had passed on to 17th street, and when the demand was made the passenger tendered this transfer in payment of the fare and the conductor refused to receive it, giving then for the first time the reason that it was not good, that was too late; he had waived the right to eject him from the car. In other words, inasmuch as the ticket

30 would have been good under ordinary circumstances from that point on, he would have had the right to use it without objection if he had presented it at that point. But if the conductor, as I have already told you, advised him before he reached that point that he was not entitled to ride upon that transfer because it was presented in advance of the point where it was good, because it was "not good," as he put it, then it does not make any difference whether he presented it after that time or not; he would have no right to insist upon riding upon the company's car under these circumstances. These rules and regulations touching transfers are reasonable regulations, and it is the duty of the plaintiff here to recognize that fact and observe the rules of the Company in that respect.

Now, gentlemen, I think that I have said about all that I care to say to you. At the outset I simply gave you a few informal instructions that will guide you. You understand that the whole case here turns upon a pivotal point—whether the demand for the fare and the offer of the transfer was made before they reached 17th street. If you find as a matter of fact that that is so, then it is your duty to return a verdict for the defendant. If, on the other hand you find that no demand was made for the fare until after they had passed the point of transfer, then it would be your duty to return a verdict for the plaintiff, and in that event, you would take up the question of damages. Upon that point I give you the instruction requested on behalf of the plaintiff:

31 "If the plaintiff was rightfully on the car as a passenger, he had the right to refuse to be ejected from it, and to make a sufficient resistance to being put off to denote that he was being put off against his will; and the fact that under such circumstances he

was put off the car, was of itself a good cause of action against the defendant, and the defendant is liable to plaintiff in damages for mental suffering, wounded pride, indignity, humiliation and insult, irrespective of any physical injury he may have received at the time, or which was caused thereby, and the jury shall award such damages as they deem compensatory."

Now, gentlemen, I simply want to safeguard you at the start against allowing anything to influence you in your deliberation other than the testimony itself. No prejudice, either for or against either of these contending parties, must have any place in your minds or your deliberations. When you go to the jury room you will then for the first time have the opportunity of conferring with each other in regard to what your duty is in disposing of this case. Now, the testimony is all before you. Bear in mind that it takes twelve men to make a jury. Your twelve minds must concur, must come to an agreement, before you can render a verdict either the one way or the other; and in the course of your deliberations it is proper and right that you have due respect for each others' opinions, to the end that your verdict may reflect the justice of this case, in other words, that it may result in a verdict that will do justice between these parties.

32 You will select one of your number as your foreman to report your verdict upon your return to the Court. If you should find for the defendant your answer will be simply "for the defendant." If you should find for the plaintiff, you will state the amount for which you find.

At the conclusion of which charge counsel for the plaintiff said to the Court: "May it please the Court: We wish to note exceptions, if it is necessary, at this time;" and the Court then and there entered the said exception upon its minutes.

Thereupon the jury retired to consider of their verdict. After noting of the said exceptions hereinbefore set forth, and the making the same a part of the record, which is also made a part hereof, and because the matters and things hereinbefore recited are not matters of record, and in order that the plaintiff may have his case reviewed on appeal by the proper court, the plaintiff by his attorneys moves the Court to sign and seal this, his bill of exceptions, to have the same force and effect as if each and every one of said exceptions had been separately signed and sealed, which motion is by the Court granted; and thereupon the plaintiff tenders this his bill of exceptions, and requests the Court to sign and seal the same according to the statute in such case made and provided, and it is accordingly done, now, for then, this 23d day of May, 1906.

THOS. H. ANDERSON, *Justice.*

33 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA, *District of Columbia*, ss:

I, John R. Young, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages, numbered from 1 to 32, inclusive, to be a true and correct transcript of the record, as per Rule 5 of the Court of Appeals of the District of Columbia, in cause

No. 47,833, At Law, wherein Frederick Shortsleeves, is Plaintiff, and Capital Traction Company, a corporation, is Defendant, as the same remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the city of Washington, in said District, this 18th day of June, A. D., 1906.

[Seal Supreme Court of the District of Columbia.]

JOHN R. YOUNG, *Clerk.*

Endorsed on cover: District of Columbia Supreme Court. No. 1693. Frederick Shortsleeves, appellant, *vs.* The Capital Traction Company. Court of Appeals, District of Columbia. Filed Jun- 28, 1906. Henry W. Hodges, clerk.